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11 UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON  
13

14 JEREMY OLSEN,

15 Plaintiff,

16 v.

17 XAVIER BECERRA, in his official  
18 capacity as Secretary of the United States  
19 Department of Health and Human  
20 Services,

21 Defendant.

No. 2:21-CV-00326-SMJ

MOTION FOR LEAVE TO FILE  
SUR-REPLY BRIEF RE:  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION

04/04/22

Without Oral Argument

Expedited Hearing Requested

22 Defendant Xavier Becerra, in his official capacity as Secretary of the United  
23 States Department of Health and Human Services, ("Defendant"), through counsel,  
24 moves for leave to file a sur-reply brief in opposition to Plaintiff's pending motion for  
25 preliminary injunction. Undersigned counsel has conferred with Plaintiff's counsel  
26 about this motion; Plaintiff does not oppose the filing of a sur-reply brief.  
27  
28

1 Defendant requests permission to file a 5-page sur-reply brief addressed to the  
2 following issues, which Plaintiff raised for the first time in his preliminary injunction  
3 reply brief:  
4

- 5 1) Plaintiff's assertion that the two Medicare reimbursement claims at issue in  
6 this case were "rejected" by the Secretary (ECF No. 22 at 8); and
- 7 2) Plaintiff's assertion that the Secretary is relying on CMS 1682-R to reject  
8 *other* Medicare reimbursement claims that Plaintiff is currently appealing  
9 through the administrative appeal process, including a claim for sensors  
provided on October 13, 2021 (ECF No. 22 at 4, 7, 10 & Exhibit A).

10 As Defendant will explain in its forthcoming sur-reply brief, these assertions  
11 are factually inaccurate. The two claims at issue in this case were paid on July 15,  
12 2021, under replacement claim numbers assigned by the Medicare Administrative  
13 Contractor ("MAC") following this Court's entry of judgment in Plaintiff's favor in  
14 *Olsen I*. The October 13, 2021 claim, which is not at issue, was paid on December 27,  
15 2021. There are no other pending claims that have not been paid.  
16  
17

18 Defendant proposes to file his sur-reply brief within 2 business days of the  
19 Court's ruling on the motion, in order to provide the Court and its staff sufficient time  
20 to review the brief prior to the March 18, 2022 preliminary injunction hearing.  
21

22 DATED this 2nd day of March, 2022.

23  
24 Vanessa R. Waldref  
United States Attorney

25 s/John T. Drake  
26 Brian M. Donovan  
27 John T. Drake  
28 Assistant United States Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2022, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

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James Pistorino PARRISH LAW OFFICES 788 Washington Road Pittsburgh, PA 15228	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____

s/John T. Drake  
John T. Drake